IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 2,781,559 for the mark SANTA EDWIGES & Design issued on November 11, 2003

ERNESTINA CASTRO, S.A. DE C.V.

A Salvadorian Corporation

Petitioner

v. : Canc. No.

DOCEIRA CAMPOS DO JORDAO LTDA. A Brazilian Corporation

Registrant

PETITION FOR CANCELLATION

Petitioner Ernestina Castro, S.A. de C.V ("Petitioner") believes that it will be damaged by the continued existence of Registration No. 2,781,559 and hereby petitions to cancel this registration pursuant to Section 14 of the Trademark Act of 1946, 15 U.S.C. §1064. As grounds for cancellation, Petitioner alleges that:

- 1. Petitioner is the owner of all right, title and interest in and to the mark PAN SANTA EDUVIGIS for a variety of food products including cookies, pies, cakes, pancakes, pancake mixes and flour in Class 30.
- 2. Since long prior to the acts complained of in this notice, Petitioner has continuously used the mark PAN SANTA EDUVIGIS in connection with its food products in several countries, including the United States.
- 3. Since the initial use of the mark, Petitioner has made a substantial investment in advertising and promoting its goods under the mark PAN SANTA EDUVIGIS.

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- 4. As a result of the significant advertising and publicity, and of several years of continuous use in the marketplace, Petitioner's mark has become known as a distinctive indicator of the origin of Petitioner's goods, and it symbolizes Petitioner's valuable goodwill.
- 5. Notwithstanding Petitioner's prior rights in its mark, Registrant has obtained Registration No. 2,781,559, for the mark SANTA EDWIGES & Design for "farinaceous food paste, namely, alimentary pastes; cookies; biscuits; petit beurre biscuits; crackers; risks; cake paste and cake powder, namely, cake mixes; cakes; sweetmeats; caramels; chewing gum; chocolate; edible ices; candy; ferments for pastes, namely, yeast; corn flakes; pies; fondants, fruit jellies in the nature of confectionery; bread rolls; pancakes; bread; popped popcorn; petit fours, puddings; ice cream; waffles; and panettones, in Class 30".
- 6. Upon information and belief, Registrant made no use of its alleged mark in commerce prior to the filing date of its application.
- 7. Upon information and belief, when Registrant applied to register the mark at issue, Registrant had full knowledge of Petitioner's prior rights in the mark PAN SANTA EDUVIGIS.
- 8. Petitioner has used its mark PAN SANTA EDUVIGIS continuously on or in connection with its goods in interstate commerce since long prior to the filing date of Registrant's application which matured into Reg. No. 2,781,559.
- 9. Registrant's alleged mark so resembles Petitioner's mark that the use thereof by Registrant, and the continued existence of Registration No. 2,781,559, is likely to cause confusion, mistake and/or deception within the meaning of Section 2(d) of the

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Trademark Act as to the source or origin of Registrant's goods, and will injure and damage Petitioner and the goodwill and reputation symbolized by Petitioner's mark.

- 10. Petitioner has been and will be damaged by the continued existence of Registration No. 2,781,559 because the mark shown in the registration is likely to cause confusion, mistake or deception among consumers who may believe that the goods of Registrant emanate from or are in some way sponsored or endorsed by or associated with Petitioner.
- 11. Registrant is not affiliated or connected with or endorsed or sponsored by Petitioner, nor has Petitioner approved any goods or services offered or sold by Registrant under the mark SANTA EDWIGES & Design, nor has Petitioner granted Registrant permission to use said mark
- 12. Petitioner's goods and those of Registrant are identical or so closely related that the public is likely to be confused and to assume erroneously that Registrant's goods are Petitioner's goods or that Registrant is connected with, sponsored by or affiliated with Petitioner.
- 13. Upon information and belief, Registrant adopted the registered mark and has subsequently used the registered mark with a deliberate intent to cause confusion among purchasers as to the source of its products.
- 14. Likelihood of confusion in this case is enhanced by the fact that the word EDWIGES in Registrant's mark SANTA EDWIGES & Design is a translation into English of the word EDUVIGIS in Petitioner's mark PAN SANTA EDUVIGIS.

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WHEREFORE, Petitioner requests that the Board grant this petition for cancellation.

ERNESTINA CASTRO S.A.DE C.V.

Ву

Cristina A. Carvalho Chiara Giuliani Arent Fox PLLC 1050 Connecticut Avenue, NW Washington, D.C. 20036 (202) 857-6000

Attorneys for Petitioner



September 24, 2004





Kwan Koehler

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Our Ref.: 024117-00001

BY COURIER

Assistant Commissioner of Trademarks US Patent and Trademark Office 2900 Crystal Drive Arlington, VA 22202

Re: Petition to Cancel Reg. No. 2,781,559 (PAN SANTA EDWIGES & Design)

Dear Sir/Madam:

Enclosed for filing in triplicate is a Petition to Cancel the above-referenced registration. Also enclosed is a check in the amount of \$300.00 to cover the filing fee. Please charge any other necessary expenses to our deposit account No. 01-2300.

Please direct any correspondence and questions regarding this proceeding to Cristina A. Carvalho at Arent Fox PLLC at 1050 Connecticut Avenue, NW, Washington, DC 20036. Thank you.

Sincerely,

Kwan Koehler

Senior Legal Assistant

Enclosures

cc: Cristina A. Carvalho, Esq. Chiara Giuliani, Esq.

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